

The Honorable Ricardo S. Martinez

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

MICROSOFT CORPORATION,

Plaintiff,

v.

MOTOROLA, INC., and
MOTOROLA MOBILITY, INC.,

Defendants.

CASE NO. C10-01577-RSM

STIPULATION AND ORDER TO STAY
ACTION

STIPULATION

Plaintiff Microsoft Corporation and Defendants Motorola, Inc., and Motorola Mobility, Inc., collectively (“the Parties”), by and through their respective counsel of record, hereby stipulate and agree as follows:

1. Pursuant to 28 U.S.C. § 1659, the Parties stipulate to a stay of proceedings in the above-captioned matter pending a final determination of the United States International Trade Commission (“ITC”) in *In the Matter of Certain Mobile Devices, Associated Software, and Components Thereof*, Investigation No. 337-TA-744.

2. On October 1, 2010, Plaintiff Microsoft Corporation (“Microsoft”) filed a Complaint in this matter. Five days later, on October 6, 2010, Microsoft filed an Amended Complaint, which added Motorola Mobility, Inc. (“Motorola Mobility”) as a defendant. Microsoft served its Amended Complaint on Motorola, Inc. (“Motorola”) on October 8, 2010 and on

Motorola Mobility on October 28, 2010. In a Stipulation filed on October 27, 2010, the Parties agreed that Motorola and Motorola Mobility's deadline to answer or otherwise move the Court for relief in this action should be extended from October 29, 2010 to November 22, 2010. The Court so Ordered this extension on November 1, 2010. ECF No. 32.

3. The Amended Complaint alleges that Motorola and Motorola Mobility have infringed, either directly or indirectly, nine Microsoft patents: U.S. Patent Nos. 5,579,517; 5,758,352; 6,621,746; 6,826,762; 6,909,910; 7,644,376; 5,665,133; 6,578,054; and 6,370,566. *See* Amended Complaint, ¶¶ 11-12, 14-15, 17-18, 20-21, 23-24, 26-27, 29-30, 32-33, and 35-36. The same day Microsoft filed its initial Complaint in this action—October 1, 2010—it also filed a Complaint with the ITC against Motorola and in connection with the same nine Microsoft patents, asserting that Motorola has infringed these patents and has therefore engaged in unfair competition or violated Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

4. Eleven days later, on October 12, 2010, Microsoft amended its ITC Complaint to add Motorola Mobility as a respondent. On November 1, 2010, the ITC instituted an investigation based on the Amended Complaint and formally named Motorola and Motorola Mobility as respondents. Thus, at present, Motorola and Motorola Mobility are both defendants in this civil action and respondents in the ITC proceeding.

5. 28 U.S.C. § 1659(a) provides that “[i]n a civil action involving parties that are also parties to a proceeding before the [ITC] under section 337 of the Tariff Act of 1930, at the request of a party to the civil action that is also a respondent in the proceeding before the Commission, the district court *shall stay*, until the determination of the Commission becomes final, proceedings in the civil action with respect to any claim that involves the same issues involved in the proceeding before the commission,” so long as “such request is made within (1) 30 days after the party is named as a respondent in the proceeding before the Commission, or (2) 30 days after the district court action is filed, whichever is later.” 28 U.S.C. § 1659(a) (emphasis added). Motorola and Motorola Mobility are parties to the above-captioned civil action and also the respondents in *In the*

1 *Matter of Certain Mobile Devices, Associated Software, and Components Thereof*, an ITC
2 proceeding involving the same issues involved here—the putative infringement of nine Microsoft
3 patents.

4 6. This requested stipulation is timely. The 30-day period under 28 U.S.C.
5 § 1659(a)(1) did not begin to run until November 1, 2010—the day Motorola and Motorola
6 Mobility were “named as [] respondent[s] in the proceeding before the Commission.” 28 U.S.C.
7 § 1659(a)(1); *see* 19 C.F.R. § 210.3 (defining “respondent” as “any person named in a notice of
8 investigation”).

9 7. Accordingly, the Parties respectfully request that the Court enter an Order directing
10 that:

11 A. Pursuant to 28 U.S.C. § 1659(a) *et seq.* and the Court’s inherent power to
12 control its docket, this civil action is stayed until a final determination of the ITC proceeding in *In the*
13 *Matter of Certain Mobile Devices, Associated Software, and Components Thereof*,
14 Investigation No. 337-TA-744;

15 B. The deadline for Motorola and Motorola Mobility to move, answer, or
16 otherwise respond to the Amended Complaint is vacated; and

17 C. Within 30 days of a final determination of the ITC proceeding in *In the*
18 *Matter of Certain Mobile Devices, Associated Software, and Components Thereof*, Investigation
19 No. 337-TA-744, and the associated expiration of this stay, the Parties shall confer with each other
20 and contact the Court for purposes of setting a Scheduling Order, which shall include the setting of
21 a new deadline for Motorola and Motorola Mobility to move, answer, or otherwise respond to
22 Microsoft’s Amended Complaint.

DATED this 8th day of November, 2010.

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ORDER

IT IS SO ORDERED.

DATED this 9 day of November 2010.



RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE

Presented by:

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